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Association of Priority Mail Users, Inc. (APMU)
Comments on Federal Trade Commission (FTC)
Notice Requesting Information and Comment of "USPS Study, Project No.PO71200"
(August 6, 2007)

The Association of Priority Mail Users, Inc. ("APMU"), which was founded in 1993, is a nationwide coalition of businesses and other organizations which are substantial users of Priority Mail. APMU, representing diverse sectors of business and industry, is a member of the Mailers Technical Advisory Committee, works with the U.S. Postal Service, and litigates before the Postal Regulatory Commission ("PRC") seeking quality service for Priority Mail at fair, reasonable, and stable rates. Additional information is available at www.apmu.org.

COMMENTS

APMU submits the following comments in response to the Federal Trade Commission ("FTC") Notice of May 1, 2007, requesting information and comments on "USPS Study Project No. PO71200." The proposed project has as its purpose to collect information for the preparation and submission of a report to the President, Congress, and the Postal Regulatory Commission, identifying Federal and state laws that apply differently to the United States Postal Service with respect to the competitive category of mail and to private companies providing similar products. The requirement for the FTC report is set forth in the Postal Accountability and Enhancement Act ("PAEA"), Pub. L.109-435, § 703(a).

The provision mandating the study by the FTC originates from a presumption that the Postal Service has been endowed with special advantages deriving from its status as a federal

enterprise. This status, it is asserted, has resulted in an unfair advantage to the USPS, enhancing its ability to obtain and maintain an unfair market advantage in mail competition. APMU looks forward to the conclusions of the study, in the hope that they will put to rest what have been unsubstantiated claims of unfair advantage to the Postal Service.

APMU believes that the historic Postal Service record of mail volume erosion and diminished market share, especially in the head-to-head package delivery market, is proof that no such advantage exists. Priority Mail and other postal products are, on balance, disadvantaged by federal enterprise regulation which has impeded effective competition in the past. In recent years, Priority Mail volume has diminished significantly. In testimony before the Postal Rate Commission in Docket No. R2006-1, a Postal Service witness, Thomas Scherer, testified that, “FY 2006 Priority Mail volumes of 924 million are still almost 25 percent below their FY 2000 peak.”

In response to the questions posed by the Request for Information and Comment, APMU states as follows:

1. Restrictions on Management Practices — Contracting Out

PAEA was intended to increase competition and efficiency in the provision of mail service. The enactment of the law emanates from a perception that change was needed to allow the Postal Service to perform in the manner which Congress had intended when it passed the Postal Reorganization Act in 1970. Unfortunately, PAEA seems to signal a new desire by certain members of Congress to manage Postal Service operations remotely.

Recent pressure from several members of the U.S. Senate and House of Representatives on the issue of the Postal Service’s right to contract out certain jobs is the most current and

egregious example of the adverse impact on the Postal Service management of being a creature of Congress, adversely affecting budgetary alternatives in a fashion that need not be endured by private sector firms.

In an effort to control costs, the Postal Service initiated a review of jobs to determine which ones could be contracted out. The interference of Congress, in what most unions acknowledge is a collective bargaining labor issue, has managed to transform this management issue into a high profile debate in a public forum outside of collective bargaining negotiations, a costly and potentially disabling exercise. One union, in Congressional testimony, readily acknowledged using its influence in Congress to impede the Postal Service's use of contracting out.

If contracting-out differences were to have a minor impact on constraining cost increases, this would be a minor matter. However, the cost savings from contracting out could be substantial. In fact, wages constitute over 80 percent of all postal costs. The average annual cost per city delivery point is currently \$215, but the average annual cost for contracted-out delivery point is less than half of this cost, \$106. The pay and benefit differential alone between a postal employee and a contracted-out employee is estimated at \$17 per hour.

Public pressure on the Postal Service, including the introduction of legislation prohibiting contracting out, has led to concessions by the Postal Service and one of its major unions freezing current practice in place for at least six months, if not more. No company, that we are aware of, is required to undergo similar interference over management policies

under threat that a law might be passed to negate decisions arrived at under collective bargaining agreements.

The newly-designed distinctions created by federal law, as well as the numerous reports and changes in administrative procedures under the Act, impose severe costs on the operations of the Postal Service, but not on private postal competitors. Recently, the Postal Service disclosed its estimate that the enactment of PAEA will cost the Postal Service between \$800 million and \$1 billion dollars in 2008. This imposition by an outside interest is not something that is endured by the private sector without some offsetting tax provision to lessen the impact. No such burdens were enacted by Congress on the competitors of the Postal Service.

2. Restrictions on Labor-Management Prerogatives — No Layoffs

Adding to the costs of the Postal Service are contract terms negotiated long ago, such as no-layoff protection that applies to 89 per cent of the Postal Service's union employees.

3. Restrictions on Worksharing

Opportunities for economies within the postal system are limited by federal laws. Efforts to economize on labor costs may include the substitution of additional mail preparation and transportation by shippers to save postal employee time. This substitution is commonly referred to as worksharing and has been the engine that has driven the increase in mailer use of the mail since the 1970's. Because of PAEA's new constraints on worksharing discounts, the Postal Service is banned from "marking up" the costs on mail processing and transportation, which are services it must sell "at cost." The entire burden of institutional cost recovery is placed on the delivery function. Once again, we are unaware of laws that are similarly imposed on private mail delivery firms.

4. The Cost of Uncertainty in Rate Making

Under PAEA, the Postal Regulatory Commission may review complaints about rate changes of competitive products and even rollback changes after the fact. The prospective cost to the Postal Service of this authority is conceptually staggering. We ask, once again, what private company is subject to similar potential penalties.

5. Restrictions on Management Prerogatives — Network Management Practices

The President's Commission on the United States Postal Service recognized the need for a new business model for the Postal Service. High on the list of the Commission's recommendations was the recognition that the Postal Service needed to redesign its postal network. The Commission's report, stated, "With mail volumes stagnant, with opportunities to outsource and provide better service at less cost and with less fixed structures to maintain, the Postal Service has significant opportunities to rein in the cost of its logistics network. To do so, however, it must be adequately shielded from external pressure to maintain an expensive and inefficient status quo." Page 81.

The "external pressures" referred to by the Commission that retard effective management include laws governing the closings or consolidations of Postal Service facilities. This is one of the cost centers imposing disparate burdens on the operation of the Postal Service and tilting the playing field unevenly towards competitors and away from the Postal Service. PAEA § 404 sets procedures which effectively attenuate delays in implementing decisions by the Postal Service to go about closing post offices. With the possible exception of some plant closing legislation, the purpose of which is community notification, we are not

aware of any legislation that so thoroughly interferes with closing decisions and thereby puts into doubt management's ability to carry out regular changes to its ability to compete.

6. Restrictions on Management Prerogatives — International Competition

With the advent of the global economy, international mail has become the source of great competition. In this arena, even under the reform legislation of PAEA, postal law has bound the Postal Service in a maze of conflicting and debilitating rules that hamper the Postal Service's ability to compete. These laws are designed to restrict competition, and their effect should be included in any analysis the FTC develops under its proposed study and report.

Among the federal agencies with which policies must be coordinated on issues of the International Mail under PAEA are: the Department of State, the Department of Homeland Security, the Department of Commerce, the Department of Transportation and the Office of the Special Trade Representative.

Further, currently under title 39 USC, the Postal Service is restricted to transporting outbound international mail under DOT-regulated rates which are estimated to cost the rate payer \$50-75 million per year. This is another cost that should be included in the laws under which the Postal Service operates, but private companies do not.

7. The Costs of PAEA

PAEA has imposed additional costs on the Postal Service, thereby affecting the competitive balance. Recently, the Postal Service disclosed that it has estimated that the enactment of PAEA will cost \$800 million to \$1 billion dollars next year. Seldom in the past has Congress enacted laws that will so affect an industry without providing the industry relief from at least some of the costs associated with the new law.

CONCLUSION

In comments it submitted in Docket No. RM2007-1 before the Postal Regulatory Commission (“PRC”), on June 18, 2007, APMU raised an objection to a proposal to classify an income tax as an attributable cost and to attribute any part of such tax to an individual competitive product. This is just one aspect that dogs the project which the FTC is undertaking.

On July 3, 2007, APMU cautioned the PRC further (also in PRC Docket No. RM2007-1) that, “UPS [United Parcel Service] assumes that the FTC will demonstrate only advantages to the Postal Service that need to be remedied. Of course, determination of ‘net economic benefit’ requires that **all benefits and all costs** associated with the Postal Service be considered. UPS generates a profoundly skewed analysis when it fails to consider either extra costs to Postal Service competitive products, or extra benefits to competitors.” (Emphasis original.)

As the Commission and its staff compile and review the federal and state laws related to the Postal Service, APMU urges that, in its full and accurate accounting of the laws that apply differently as between the Postal Service and other private sector companies, the FTC address, in its report and findings, not merely the seeming advantages to the Postal Service, but also the costly burdens imposed on the Postal Service by Congress, federal laws, and other requirements.

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